IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No. 8070 of 1996

Between:

1 Lakkaraju Narasimha Doss S/o Raghavaiah
Aided Elementary School, Kakanipalem, Addanki, Prakasam district.
2 (Late) Kothuri Nageswara Rao
Rep. by his Wife Smt. Mahalakshmamma,

W/o K. Nageswara Rao, 64 years, S.R.R.V.P. School,

Ramakur, Via: Varaparla,
Prakasam District.
3 Bachina Venkata Subba Rao S/o Suryanarayana
S.R.R.V.P. School, Ramakur, Via: Varaparla,
Prakasam District.

..... PETITIONERS

AND

1 District Educational Officer,
Ongole, Prakasam District.
2 Accountant General,
A.P. Hyderabad.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction, more particularly in the nature of Writ of Mandamus, declaring the inaction of the 1st respondent in fixing the pay of the Petitioners at Rs.210/- in the scale of 200-240 from the date of posting in the posts of Selection Grade Secondary Grade Teachers posts as illegal, discriminatory and contrary to the Government Orders in G.O.Ms.No.1196, dated 30-11-1973 read with G.O.Ms.No.178, Education Department, dated 2-4-1983 and the order of the A.P.

Administrative Tribunal, dated 22-2-1995, consequently direct the 1st respondent to fix the pay of the Petitioners at Rs.210/- in the scale of Rs.200-240, and allow the consequential benefits in the subsequent regrouped and Revised pay scales and the 2nd respondent to allow the retirement benefits basing on the last pay to be drawn in view of the repay fixation, and grant such other relief.

Counsel for the Petitioner: M/s. R.VENKATA RAMUDU &

K.JAGAN MOHAN REDDY

Counsel for the Respondents: GP FOR SCHOOL EDUCATION

The Court made the following :

ORAL ORDER:

This writ petition is filed seeking a Mandamus declaring the inaction of the 1st respondent in fixing the pay of the petitioners at Rs.210/- in the scale of 200-240 from the date of posting in the Selection Grade Secondary Grade Teachers posts as arbitrary, illegal and contrary to the Government Orders in G.O.Ms.No.1196, dated 30-11-1973 and G.O.Ms.No.178, Education Department, dated 2-4-1983 and consequently to direct the 1st respondent to fix the pay of the petitioners at Rs.210/- in the scale of Rs.200-240, and grant all consequential benefits in the subsequent regrouped and Revised pay scales.

It is the case of the petitioners that they are all retired Secondary Grade Teachers. Petitioner No.1 retired from service on 30-6-1987, petitioner No.2 on 10-12-1986 and petitioner No.3 on 30-6-1992. G.O.Ms.No.1196, Education (H) Department, dated 30-11-1973 was issued creating Selection Grade posts for the Secondary Grade Teachers in the scale of Rs.200-10-240 to the extent of 25% of total strength of the cadre of Secondary Grade Teachers working in non-Governmental Schools. Thus, 14,156 posts were created on he basis of total strength of 56,625 Secondary Grade Teachers. Government decided to create and sanction these posts within five years with effect from 1-4-1974 at the rate of 2,831 posts per year. It was also made it a requirement that a Secondary Grade Teacher should have reached maximum in the revised scale of Rs.96-200 so as to make him eligible for consideration of promotion to selection grade. However, the said requirement was taken away by issuing

G.O.Ms.No.1146, Education Department, dated 27-9-1975. The Director of School Education allotted 25 selection grade posts for Secondary Grade Teachers working in aided schools for the year 1975-76 in Prakasam district. Thus, the District Educational Officer issued orders appointing the petitioners as Selection Grade Secondary Grade Teachers vide his Proceedings dated 31-7-1978 (with retrospective effect from 1-4-1975). It is also the case of the petitioners that though they have been appointed in the selection grade post of Secondary Grade Teacher in the year 1978, their pay has to be fixed as per the revised pay scales,1974 of Rs.200-240 at Rs.210/- i.e. in the pre-revised pay scale at the first instance and then they should be put on the selection grade.

In substance, the case of the petitioners is that though they have been promoted to the selection grade Secondary Grade Teacher post in the year 1978, since it was given with retrospective effect i.e. from 1-4-1975, their pay ought to have been first fixed in the scale of Rs.200-240 pre-revised scale and thereafter in the selection grade. Thus, they are asking for revising the whole thing. Petitioners, in this regard, relied upon G.O.Ms.No.178, Education Department, dated 2-4-1983 clarifying that the selection grade posts created in the year 1974-75 with effect from 1-4-1975 shall be created in the pre-revised scale only i.e. in the scale of Rs.200-240 and thereby the said fixation shall be brought into 1974 revised pay scales and fixed in the scale of Rs.290-520. Therefore, the inaction of the 1st respondent in fixing their pay at Rs.210/- i.e. in the pre-revised pay scales caused irreparable monetary loss both in the revised pay scales and in the retirement benefits. The last pay drawn by petitioners 1 and 2 was Rs.1690/- and by the 3rd petitioner was Rs.2110/-. Petitioners 1 and 2 will get their last pay at Rs.1900/- and the petitioners will get Rs.2330/- had they been first fixed their salary in the pre-revised scales of pay and thereafter put on the selection grade in the revised pay scales, since their promotion was effected in the selection grade with effect from 1-4-1975.

A detailed counter affidavit has been filed by the 1st respondent denying the allegations made by the petitioners. At the outset, it is asserted that the petitioners having retired from service on 30-6-1987, 10-12-1986 and 30-6-1992 respectively, filed the writ petition in the year 1996. The pension of the petitioners was correctly fixed by the Department after fixing their pay in selection grade in terms of G.O.Ms.No.178, dated 2-4-1983. The pension was sanctioned by the 2nd respondent

and the petitioners are drawing their respective pensions. They have received the pension without any protest. Therefore, the petitioners are estopped from contending that the pension was wrongly fixed. It is further stated that the District Educational Officer issued orders appointing the petitioners in the selection grade Secondary Grade Teacher post vide his Proceedings dated 3-7-1978. With regard to the allegation that the petitioners were given promotion to the Selection Grade Secondary Grade Teacher post with retrospective effect from 1-4-1975, the records are not available in the Office of the District Educational Officer to verify as to whether they were given promotion with retrospective effect or not. The petitioners are put to strict proof of the same. The selection grade posts were created after 1-4-1976. Therefore, the pay of the persons appointed in the selection grade posts, which were created after 1-4-1976 has to be fixed in terms of Para-4 of G.O.Ms.No.178, dated 2–4-1983. The pay of the petitioners has been fixed in terms of Para-4 of the said G.O. at Rs.356/- in the year 1974 in the revised pay scale of Rs.290-520. The contention of the petitioners that their pay has to be fixed at Rs.210/- in the scale of Rs.200-240 though the appointment orders were issued in the year 1978 i.e. after the issuance of G.O.Ms.No.180, Finance and Planning Department, dated 15-7-1975 is untenable. The scale of pay for selection grade posts, which were created between 1-4-1974 and 1-4-1975, shall be fixed at Rs.200-240 and thereafter in the revised pay scales of Rs.290-520 of 1974 pay scales as per Para-3 of G.O.Ms.No.178, dated 2-4-1983. The petitioners were promoted to the selection grade posts, which were created during 1975-76. Therefore, the pay of the petitioners has to be fixed in terms of Para-4 of G.O.Ms.No.178, dated 2-4-1983. Thus, the contention of the petitioners that if their pay fixation was made at Rs.210/- in the scale of Rs.200-240, their pay in the revised pay scale of 1974 would have been fixed at Rs.400/- instead of Rs.356/- is not tenable. Further, the petitioners have not reached the maximum in the pre-revised scale of Rs.96-200. Hence, their request to fix their pay at Rs.210/- cannot be considered as per rules. Therefore, the writ petition is liable to be dismissed.

Heard both sides.

Learned counsel for the petitioners placed heavy reliance on Para-3 of G.O.Ms.No.178, dated 2-4-1983, which reads as under:

> "3. Government after careful consideration hereby direct that in partial modification of the orders issued in para 2 of the G.O. 3rd read above, the Selection

Grade posts sanctioned in the G.O. 1st read above and which were created from 1-4-1974 and 1-4-1975 be created in the scale of Rs.200-240 of the 1969 pay scales and the pay of the Teachers promoted to those posts between 1-4-1974 and 1-4-1975 be fixed first in the said scale and thereafter in the revised pay scales of Rs.290-520 of 1974 pay scales with monetary benefit from 1-5-1975 or date of entry into the Revised Pay Scales 1974, whichever is later."

Whereas, learned Government Pleader relied upon Para-4 of the very same G.O. for the purpose of fixing pay scale of the petitioners and the same reads as under:

"4. Government also further direct that in the case of Teachers, who are appointed to the Selection Grade in the posts created from 1-4-1976, 1-4-1977 and 1-4-1978 in pursuance of the orders issued in G.O.Ms.No.1196, Education (H) Department, dated 30-11-1973, the fixation of pay shall be in the scale of Rs.290-520 by taking their pay in the scale of Rs.250-430 which is revised scale for the scale of Rs.96-200 with monetary benefit from the date of their appointment to those posts."

Admittedly, the petitioners were promoted to the Selection Grade Secondary Grade Teacher post in the year 1978, may be with retrospective effect from 1-4-1975. Para-3 of G.O.Ms.No.178, dated 2-4-1983 categorically states that the selection grade post created from 1-4-1974 and 1-4-1975 be created in the scale of Rs.200-240 of 1969 pay scales and the pay of the teachers promoted to those posts between 1-4-1974 and 1-4-1975 be fixed first in the said scale and thereafter in the revised scale of Rs.290-520 of 1974 pay scales with monetary benefit from 1-5-1975 or date of entry into the revised pay scales of 1974 whichever is later. Admittedly, the petitioners, even assuming that they were retrospectively promoted, it was only from 1-4-1975 and not between 1-4-1974 and 1-4-1975. Therefore, the respondents have rightly contended that Para-3 has no application to the case of the petitioners. It is categorically asserted that the posts were created after 1-4-1976. Therefore, even if they are given promotion with retrospective effect from 1-4-1975, their case has to be considered only in accordance with Para-4 of G.O.Ms.No.178, dated 2-4-1983. So far as this aspect is concerned, there is no dispute.

At this juncture, it may be necessary to notice that Government issued Memo No.1196, dated 30-11-1973, which reads as under:

"In the year 1970, the State Government agreed in principle to create selection grade posts for Secondary Grade Teachers in the scale of Rs.200-10-240

to the extent of 25% of the total strength of the cadre of Secondary Grade working under different managements is 56,625. 25% of this comes to 14,156. Government have decided to create and sanction these posts within five years with effect from 1-4-1974 at the rate of 2,831 per year and the last batch being 2,832 posts.

PART-I

1. 25% of the posts of Secondary Grade Teachers, who are in the revised scales of Rs.96-200 at the rate of 5% every year commencing from 1-4-1974 shall be in the selection grade in the revised scale of Rs.20-10-240 in schools under local bodies and Aided Managements.

PART-II

1……..

2…….

3 The pay of the Secondary Grade Teachers promoted to selection grade shall be fixed at Rs.210/- i.e. by allowing one increment over the present pay drawn i.e. Rs.200/-.

Further, it is also necessary to refer G.O.Ms.No.1146, Education (K) Department, dated 27-9-1975, the relevant portion of which, reads as under:

"7. The existing Secondary Grade Trained Teachers in the pre-revised scale of Rs.96-200 shall be redesignated as Secondary Grade Trained Teachers (Ordinary category) and the existing Secondary Grade Trained Teachers (Selection Grade) in the pre-revised scale of Rs.200-240 shall be redesignated as Secondary Grade Trained Teachers (special category). The category of Secondary Grade Trained Teachers (special category) shall be deemed to be a promotion category. The restriction of reaching the maximum of the revised pay scale of 1974 for eligibility to special category shall not apply. The Secondary Grade Trained Teachers (Ordinary grade) shall be eligible for promotion to the special category, subject to availability of vacancies in the total number of posts created in accordance with the instructions issued in Government Memo No.6156-B1/68-3, dated 3-6-1969. No fresh posts shall be created in the special category in future."

A conjoint reading of the above two Governmental Orders would make it clear that after issuance of G.O.Ms.No.1146, dated 27-9-1975 existing Secondary Grade Trained Teachers in the pre-revised scale of Rs.96-200 were redesignated as Secondary Grade Trained Teachers (ordinary category) and existing Secondary Grade Trained Teachers (selection grade) in the pre-revised scale of Rs.200-240 shall be redesignated as Secondary Grade Trained Teachers (special category) and the special grade category was deemed to be a promotion category. However, the restriction of reaching the maximum of the pre-revised pay scales of 1974 for eligibility to the special category was taken away. Further, Secondary Grade Trained

Teachers (ordinary grade) were made eligible for promotion to the post of special category, subject to availability of vacancies etc. Therefore, since the petitioners were admittedly promoted to the post of selection grade Secondary Grade Teachers in the year 1978, though with retrospective effect from 1-4-1975, their case squarely falls into Para-4 of G.O.Ms.No.178, dated 2-4-1983. The respondents have rightly considered and fixed the salary of the petitioners in the proper scale.

For all the above reasons, the writ petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition is dismissed. No costs.

31-3-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 District Educational Officer,
Ongole, Prakasam District.
2 Accountant General,
A.P. Hyderabad.

3 2 CCs to Govt.Pleader for School Education, High Court Buildings, Hyderabad(OUT)

4 CD copies